

DENIED
MOOT

Nov 04, 2016

Charles E. Rendlen III

CHARLES E. RENDLEN, III
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re	}	Case No. 16-40120-705
	}	Chapter 11
ARCH COAL, INC.,	}	
ICG, ILLINOIS, LLC, et. al.	}	(Jointly Administered)
	}	
Debtors in Possession,	}	MOTION OF ERVIN ARMBRUSTER FOR
	}	RELIEF FROM AUTOMATIC STAY TO
	}	FILE SUIT IN STATE COURT FOR
	}	DAMAGES FOR PERSONAL INJURIES
	}	AND NOTICE OF HEARING
	}	
ERVIN ARMBRUSTER	}	Hearing date: May 11, 2016
Movant,	}	Hearing time: 1:00 p.m.
	}	Hearing Location: Courtroom 7 th Floor South
ARCH COAL, INC., and	}	Response Deadline: May 4, 2016
ICG, ILLINOIS, LLC,	}	
	}	
Respondents	}	

NOTICE OF HEARING

WARNING: ANY RESPONSE OR OBJECTION TO THIS MOTION MUST BE FILED WITH THE BANKRUPTCY COURT BY MAY 4, 2016. A COPY MUST BE PROMPTLY SERVED UPON THE UNDERSIGNED. FAILURE TO FILE A TIMELY RESPONSE MAY RESULT IN THE COURT GRANTING THE RELIEF REQUESTED PRIOR TO THE HEARING DATE.

MOVANT WILL CALL UP THIS MOTION BEFORE THE HONORABLE CHARLES E. RENDLEN, III, ON MAY 11, 2016, AT 1:00 P.M., IN THE UNITED STATES BANKRUPTCY COURT, EASTERN DISTRICT OF MISSOURI, THOMAS F. EAGLETON BUILDING, 111 S. TENTH ST., ST. LOUIS, MO 63102, 7th FLOOR SOUTH.

MOTION

Ervin Armbruster, (“Movant”), by and through his attorney, states as follows in support of his Motion for Relief from Automatic Stay to File Suit in State Court for Damages for Personal Injuries :

1. This Court has jurisdiction of this proceeding pursuant to 28 U.S.C. §§1334 and 157 and 11 U.S.C. §362.
2. This is a core proceeding under 28 U.S.C. §157(b)(2)(G).
3. Arch Coal, Inc. (Arch”), and ICG Illinois, LLC (“ ICG”) (collectively “Debtors”) filed a Petition for Relief under Chapter 11 of Title 11, U.S. Code, on January 11, 2016, in the United states Bankruptcy court for the Eastern District of Missouri.
4. Movant holds a claim against Debtors based on injuries Movant sustained when a high pressure hose separated from a tank and struck him on or about June 27, 2014, at a coal mine known as the Viper Mine owned by Arch and operated by ICG, and Movant intends to seek recovery of damages in excess of \$25,000.00 (“the Claim”).
5. Suit on the Claim has not yet been filed against Debtors.
6. Debtors, have insurance coverage that will be liable for and pay any judgment or settlement entered against Debtors based on the Claim, up to the limits of insurance coverage.
7. Cause exists to grant relief from the Automatic Stay to allow Movant to settle or litigate the Claim to judgment against Debtors in an appropriate state court rather than in the Bankruptcy Court, as follows:
 - A. The Claim is a personal injury action for which state law applies and should be pursued in a state court rather than in the Bankruptcy Court; and,

B. Continuation of the Automatic Stay imposed pursuant to 11 U.S.C. Section 362 places the claim in jeopardy as the statute of limitations to file suit on the Claim expires in June, 2016; and,

C. The bankruptcy estate will not be harmed if relief from the automatic stay is granted. Movant's claim has to be liquidated in some forum and the state court is uniquely equipped to liquidate the claim because it is based on state law, not federal or bankruptcy law. The insurance company, and not Debtors or the bankruptcy estate, will be responsible for payment of fees and expenses in participating in the trial.

8. Movant does not seek relief from the automatic stay by this Motion to enforce collection of any judgment against Debtors.

9. A copy of the proposed order granting the relief requested herein is attached as Exhibit 1 and may be found at <https://cases.primeclerk.com/archcoal>.

WHEREFORE, Movant moves this Court to enter its Order modifying the Automatic Stay of 11 U.S.C. Section 362 to permit Movant to file suit on the Claim and pursue the Claim to settlement or judgment; limiting Movant's enforcement of any settlement or judgment of the Claim against Debtor's insurance carrier or provider; and, that the Automatic Stay of 11 U.S.C. Section 362 shall remain in effect against any other action by Movant against Debtors for collection of any settlement or judgment arising from the Claim ; and, Movant requests such other relief as the Court deems proper.

Karfeld Law Firm, P.C.
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ATTORNEY FOR MOVANT

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re	}	Case No. 16-40120-705
	}	Chapter 11
ARCH COAL, INC.,	}	
ICG, ILLINOIS, LLC, et. al.	}	(Jointly Administered)
	}	
	}	ORDER GRANTING MOTION OF ERVIN
Debtors in Possession,	}	ARMBRUSTER FOR RELIEF FROM
	}	AUTOMATIC STAY TO FILE SUIT IN
_____	}	STATE COURT FOR DAMAGES FOR
	}	PERSONAL INJURIES
	}	(Document)
	}	
ERVIN ARMBRUSTER	}	Hearing date:
	}	Hearing time: 9:30 a.m.
Movant,	}	Hearing Location: Courtroom 7 th Floor South
	}	Response Deadline:
ARCH COAL, INC., and	}	
ICG, ILLINOIS, LLC,	}	
	}	
Respondents	}	

The Motion of Ervin Armbruster for Relief from Automatic Stay to File Suit in State Court for Damages for Personal Injuries (“the Motion”) is presented for hearing pursuant to notice. The Court has considered the pleadings in this case and the record as a whole and finds that good cause exists to grant the relief requested.

IT IS, THEREFORE, ORDERED that the Motion is GRANTED in that the Automatic Stay of 11 U.S.C. Section 362 is hereby modified; and, Ervin Armbruster is hereby permitted to file suit and pursue to settlement or judgment his claims against Arch Coal, Inc. (“Arch”), and ICG, Illinois, LLC (“ICG”) (Collectively “Debtors”) based on injuries he sustained when a high pressure hose separated from a tank and struck him on or about June 27, 2014, at a coal mine known as the Viper Mine owned by Arch and operated by ICG (“the Claim”); and, Movant’s enforcement of collection of any settlement or judgment against Debtors based on the Claim is hereby limited to recovery from Debtors’ insurance carrier to the extent of its coverage; and, the Automatic Stay of 11 U.S.C. Section 362 shall remain in effect against any other action for collection of any judgment against Debtors arising from the Claim; and, all other relief requested

in the Motion is denied without prejudice.

Dated:
at St. Louis, Missouri

CHARLES E. RENDLEN, III
United States Bankruptcy Judge

Order prepared by:
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